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July 18, 2001

VIA HAND DELIVERY

Magalie R. Salas, Secretary
Federal Communications Commission
Portals II, Filing Center, TW-A325
Washington, D.C. 20554

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JUL 18 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **MM Docket No. 92-214**
FM Table of Allotments
(Columbia, Bourbon, Leasburg,
Gerald, Dixon and Cuba MO)

Dear Ms. Salas

Enclosed herewith for filing, on behalf of our client, Lake Broadcasting, Inc., are an original and four (4) copies of its Motion to Strike Opposition to Petition for Reconsideration or, Alternatively, Reply to Opposition in the above-referenced matter.

Please direct all communications concerning this matter to the undersigned.

Very truly yours


Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (w/enc.)

No. of Copies rec'd 074
List A B C D E

BEFORE THE

Federal Communications Commission

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 92-214
Table of Allotments,)	RM-8061
FM Broadcast Stations)	RM-8144
(Columbia, Bourbon, Leasburg,)	RM-8145
Gerald, Dixon and Cuba, Missouri))	RM-8146
)	RM-8147

RECEIVED
JUL 18 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

MOTION TO STRIKE OPPOSITION TO
PETITION FOR RECONSIDERATION
OR, ALTERNATIVELY,
REPLY TO OPPOSITION

Lake Broadcasting, Inc. ("Lake"), licensee of Station KBMX(FM), Eldon, Missouri, and permittee of Station KFXE-FM, Cuba, Missouri, by its attorneys, pursuant to Section 1.429 of the Commission's Rules, hereby moves to strike the "resubmitted" July 3/11, 2001 "Opposition" of Zimmer Radio of Mid-Missouri, Inc. ("ZRMMI"), licensee of Station KCMQ(FM), Columbia, Missouri, in this proceeding. Out of abundance of caution, Lake also responds to the Opposition on the merits. For the reasons that follow, ZRMMI's Opposition should be dismissed or denied.

1. On July 11, 2001, ZRMMI filed a letter purporting to "resubmit" its July 3, 2001 Opposition in this proceeding. Counsel for Lake did not receive a copy of said Opposition until it was faxed to him on July 11, after he telephoned ZRMMI's counsel and questioned the fact that he had received two copies of an Opposition pleading from MM Docket No. 91-352 with two different Certificates of Service. This telephone call alerted ZRMMI's counsel to an embarrassing error, but, to date, ZRMMI has failed to establish that its putative July 3, 2001 Opposition in this proceeding

was actually filed on July 3, 2001. (At least as of July 17, 2001, ZRMMI did not have a July 3 date-stamped copy of the pleading.) If, in fact, ZRMMI's Opposition was not actually filed until it was "resubmitted" on July 11, 2001, then Lake is constrained to move to strike the "resubmitted" pleading. But for the vigilance of Lake's counsel in bringing the Certificate of Service (and perhaps filing) error to ZRMMI's attention, Lake would never have received a copy of the Opposition at all, and would have been deemed to have defaulted by failing to reply to it. Under the circumstances, Lake submits that ZRMMI has a higher duty of inquiry than it has shouldered. It is not up to Lake to search the Commission's records to ascertain what was or was not filed on July 3. Absent substantial proof that ZRMMI's pleading was timely filed, it should be struck as eight days late.

2. Assuming, arguendo, that ZRMMI's "resubmitted" Opposition is accepted for consideration, it should be denied. ZRMMI alleges (at ¶1) that it is adversely affected by Lake's Petition for Reconsideration because "a cloud remains over the station's operations due to the continuing pendency of the instant proceeding". According to ZRMMI (at ¶4), "Nothing Lake can say changes the fact that its authorizations have been revoked, and that revocation has become final". Thus, according to ZRMMI (*id.*), "Lake has no continuing license or construction permit which may be modified by the Commission". As Lake will now demonstrate, ZRMMI is wrong on all counts.

3. The Opposition fails to take account of the Commission's related "*Public Notice*" ("Permanent and Interim Application Procedures Announced for Authority to Operate Stations Formerly Licensed to Entities Controlled by Michael Rice"), DA 01-1441, released July 3, 2001. That *Public Notice* (at 2) grants Lake special temporary authorization ("STA") to continue its operation of Station KBMX(FM) for 90 days from the date of the *Public Notice*, or until 14 days after interim operators or permanent successor licensees have given notice that they are ready to commence operations, whichever occurs sooner. Moreover, and most importantly, the *Public*

Notice (id.) states that: (a) minor change applications must continue to protect Lake's two sister AM facilities at Terre Haute, Indiana (WBOW and WBUZ), formerly licensed to Contemporary Media, Inc.; and (b) the Commission will accept interim proposals and new station proposals for permanent authority for those AM stations which specify "current operating parameters". In other words, the Commission is providing interference protection to Stations WBOW and WBUZ as if they were currently licensed stations and is waiving its AM technical rules in order to "grandfather" the stations' existing technical facilities.

4. Lake submits that these two significant technical leniencies, and the future auction of permanent facilities, are completely at odds with ZRMMI's notions that Lake's stations have no present or future operating status or technical "rights". These leniencies and the STA granted to all of Michael Rice's operating stations also demonstrate that the Commission has sufficient statutory and regulatory authority to waive or modify any of the policies or rules that might otherwise apply to the stations. Thus, as the *Public Notice* itself proves, it is premature for ZRMMI to proclaim that Lake has no authorizations that can be "modified" by the Commission.

5. Put differently, the *Public Notice* is silent about what special STA's or other leniencies may be applied to Lake's FM stations by future Commission Order. For instance, the Commission might decide that Lake's "rulemaking rights" in the subject MM Docket No. 92-214 proceeding "convey" to the new-station applications for the facilities of Stations KBMX(FM) and KFXE-FM that will be the subject of competitive bidding in future Auction No. 37.

6. Under these circumstances, Lake renews its claim that it was premature for the Commission's Mass Media Bureau ("Bureau") to have dismissed Lake's previous Petition for Reconsideration in this proceeding. The matters presented in that Petition for Reconsideration are not yet moot and may not ultimately become moot.

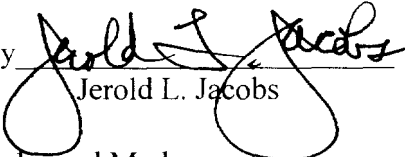
7. Accordingly, Lake respectfully requests that the Bureau should withhold any

dismissal action and should hold this matter in abeyance, pending the Commission's ultimate resolution of the proceedings for interim authorization and permanent authorization of Lake's stations, announced in the *Public Notice* and subsequent Commission Orders.

WHEREFORE, in view of the foregoing, Lake respectfully asks the Mass Media Bureau to dismiss or deny ZRMMI's Opposition, set aside the *Memorandum Opinion and Order*, DA 01-1017, released April 20, 2001, in this proceeding, reinstate Lake's Petition for Reconsideration, and hold the matter in abeyance pending the outcome of further proceedings before the Commission pertaining to Mr. Rice's stations and construction permits, including Stations KBMX(FM) and KFXE-FM, as specified in the *Public Notice*.

Respectfully submitted,

LAKE BROADCASTING, INC.

By 
Jerold L. Jacobs

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1920 N Street, N.W. Suite 300
Washington, D.C. 20036
(202) 293-3860

Its Attorneys

Dated: July 18, 2001

CERTIFICATE OF SERVICE

I, Maryam B. Jeffrey, hereby certify that I have mailed, first class postage prepaid, or have caused to be hand-delivered, on this 18th day of July 2001, a copy of the attached MOTION TO STRIKE OPPOSITION TO PETITION FOR RECONSIDERATION OR, ALTERNATIVELY, REPLY TO OPPOSITION to the following:

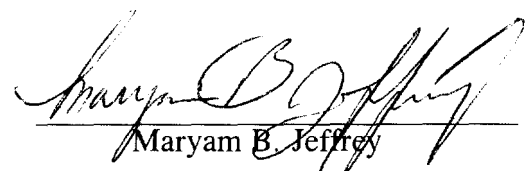
John A. Karousos, Chief (**Hand Delivery**)
Allocations Branch
Policy and Rules Division
Mass Media Bureau Room 3-A266
Federal Communications Commission
Washington, DC 20554

Ms. Kathleen Scheuerle (**Hand Delivery**)
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Maryam B. Jeffrey